

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:17-cr-00198-2

DENNIS CARTER

MEMORANDUM OPINION AND ORDER

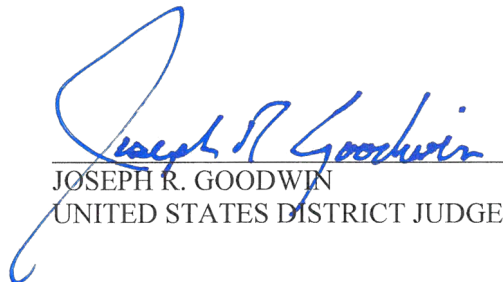
Pending before the court is a pro se letter-form motion for compassionate release, [ECF No. 443], filed by Defendant Dennis Carter. For me to reduce or modify Mr. Carter's sentence under compassionate release, I must find that he has exhausted his administrative remedies or waited 30 days from petitioning the Warden at the facility in which he is housed, has demonstrated "extraordinary and compelling reasons," is not a danger to the safety of others, and find that his release is consistent with § 3553(a) factors. *See e.g., United States v. Howard*, No. 4:15-CR-00018-BR, 2020 WL 2200855, at *2 (E.D.N.C. May 6, 2020); U.S.S.G. § 1B1.13 (2018).

In this case, Mr. Carter attached documentation in an attempt to show that he has exhausted his administrative remedies. While Mr. Carter did request a reduction in sentence from the warden at Federal Correctional Institution Hazelton in January 2021, he did so claiming that he has a terminal illness. [ECF No. 443, at 4]. FCI Hazelton determined that Mr. Carter does not have a terminal illness and denied his request. There is no indication that Mr. Carter made any request for compassionate

release from the warden for the reasons stated in his motion in this court—that he suffers from severe asthma and is at risk of serious illness from COVID-19. Because Mr. Carter has not given the warden at FCI Hazelton an opportunity to consider compassionate release on this basis, I cannot find that he has exhausted his administrative remedies. Therefore, his Motion, [ECF No. 443], is **DENIED without prejudice**. This ruling means that Mr. Carter may petition the court again after making a request to the Warden *and* either exhausting his administrative remedies through the Bureau of Prison’s appeal process or waiting 30 days from the Warden’s receipt of his request, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A).

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

DATE: March 31, 2021



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE